

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1740 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
CHANDRAKANTRATILAL GAJJAR

Versus

NARESHBHAI BABUBHAI DIWAN

-----  
Appearance:

MR RS SANJANWALA for Petitioners

Mr.Supehia for Ms VIDHATRI PAREKH for Respondents

-----  
CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 24/04/97

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr.Supehia,  
learned Advocate for the respondents.

2. Heard. The present respondents have filed Small Civil Suit No. 337 of 1995 against the present petitioners. Interim injunction application was moved and the trial Court passed order (dated 29.6.1996) to the following effect :

"The injunction is granted in the terms mentioned hereunder in favour of the plaintiffs and against the defendants.

- i) The defendants are hereby restrained till the final disposal of the suit from dispossessing the plaintiffs from the suit premises without following due process of law.
- ii) The defendants are hereby further restrained till the final disposal of the Suit from diminishing or obstructing to plaintiffs' right to have access over Vada land, admeasuring 4 sq.ft. from the suit shop No.41 to the suit latrine."

The respondents carried the matter in Misc.Civil Appeal No.104 of 1996 in the Court of learned Extra Assistant Judge, Surat and the appellate Court passed the following order (31.7.1996) :

"Appeal of the appellant original plaintiffs is hereby allowed. The relief of interim injunction prayed by the appellants plaintiffs before the trial Court below Exh.5 in the said suit hereby granted and the order passed by the trial Court is hereby modified and ordered that the respondents defts., their men, servants and agents are hereby restrained not to interfere the plaintiffs in the use and enjoyment of the wada land situated towards the west of the rented premises to the plaintiff by the defendants landlords which is open to sky till the disposal of the Small Civil Suit No.337/95.

It is hereby clarified that the appellants plaintiffs shall not make any construction or alteration or addition in the open Wada land which is towards the west of their rented premises."

3. In the present matter the respondents have filed Affidavit inter-alia stating therein that the aforesaid vada land has been in use, not only by the respondents, but also by other tenants from the very beginning. That would necessarily mean that the respondents can not claim exclusive possession over the vada land. Therefore, even by way of interim relief they cannot be permitted to exclusively use the vada land. Hence a further clarification to the aforesaid impugned orders in this

revision Application would serve the ends of justice.

4. The Appellate order will have following further clarification and will stand accordingly modified to that extent.

It is further clarified that the plaintiffs shall not use the vada land in such manner as would obstruct other tenants' use thereof. The appellate order impugned in this revision Application shall stand modified accordingly.

Rule made absolute only in the aforesaid terms with no order as to costs.

\* \* \* \* \*